

MAY 24 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OSCAR ARMANDO CASTANEDA-
LOPEZ,

Defendant - Appellant.

No. 05-50070

D.C. No. CR-04-00036-DOC-1

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted May 15, 2006^{**}

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Oscar Armando Castaneda-Lopez appeals from the 41-month sentence imposed after his guilty-plea conviction for being an illegal alien found in the

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

United States, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

Castaneda-Lopez's contentions regarding *Almendarez-Torres v. United States*, 523 U.S. 224 (2005), are foreclosed by this circuit's case law. *See United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that the court continues to be bound by the Supreme Court's holding in *Almendarez-Torres*); *see also United States v. Pacheco-Zepeda*, 234 F.3d 411, 414-15 (9th Cir. 2000) (rejecting argument that *Almendarez-Torres* should be "strictly limited" to the facts of that case).

However, because Castaneda-Lopez was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the district court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional error under *United States v. Booker*, 543 U.S. 220 (2005)).

REMANDED.